

**UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
SPARTANBURG DIVISION**

KELLY DAWSEY,	)	
	)	
Plaintiff,	)	
v.	)	CA 7:22-cv-3738-TMC-KFM
	)	
BAYERISCHE MOTOREN WERKE	)	
AKTIENGESELLSCHAFT and BMW	)	
MANUFACTURING CO., LLC,	)	
	)	
Defendants.	)	
	)	

**BAYERISCHE MOTOREN WERKE AKTIENGESELLSCHAFT’S  
RESPONSE TO PLAINTIFF’S OBJECTIONS TO THE  
REPORT AND RECOMMENDATION OF MAGISTRATE JUDGE**

Defendant Bayerische Motoren Werke Aktiengesellschaft (“BMW AG”) respectfully submits this Response to Plaintiff’s Objections to the Report and Recommendation of the Magistrate Judge (ECF No. 115) (the “Objections”). The Magistrate Judge’s Report and Recommendation is correct.

Plaintiff brought identical claims against BMW AG and BMW Manufacturing Co., LLC (“BMW MC”) in connection with Plaintiff’s employment at BMW MC. Both BMW AG and BMW MC moved for summary judgment. (ECF Nos. 92, 102). Because Plaintiff’s claims are identical as to both Defendants, BMW AG incorporated by reference the BMW MC Summary Judgment Motion and requested entry of judgment on those grounds. (ECF Nos. 102, 103). BMW AG also moved for summary judgment on multiple grounds unique to BMW AG, including the absence of personal jurisdiction over BMW AG. *Id.*

On June 21, 2024, U.S. Magistrate Judge Kevin F. McDonald issued the Report and Recommendation (the “Report”) recommending that the District Court grant both BMW MC’s

and BMW AG's summary judgment motions. (Report 17 ("[T]he undersigned recommends that the district court grant the defendants' motions for summary judgment (docs. 92; 102)."). The Magistrate Judge addressed only those grounds for summary judgment common to both Defendants and did not separately address the grounds unique to BMW AG.

BMW AG therefore incorporates by reference BMW MC's Response to Plaintiff's Objections (ECF No. 116), and for the reasons stated therein, the Court should adopt the Magistrate's Report and enter summary judgment for both Defendants.

BMW AG also reserves, and does not waive, all arguments related to the independent bases for summary judgment that the Magistrate Judge did not need to reach in recommending the entry of summary judgment for BMW AG. Specifically:

- There is no basis for the exercise of personal jurisdiction over BMW AG, which is the foreign parent company of BMW MC. The undisputed facts show that BMW AG did not direct or control the personnel plans at issue. (ECF 103 at 8-20<sup>1</sup>).
- The undisputed facts demonstrate that BMW AG was not Plaintiff's employer, and that BMW AG is not subject to Title VII and Section 1981 liability. (*Id.* at 20-26).
- The undisputed facts demonstrate that BMW AG did not control the personnel decisions at issue. Were the facts otherwise, *The Treaty of Friendship, Commerce, and Navigation between the United States of America and the Federal Republic of Germany* bars such a claim of national origin discrimination. Under the Treaty, BMW AG is entitled, without exposure to liability, to direct the employment of certain personnel at its US subsidiaries. (*Id.* at 26-27).

WHEREFORE, Defendant BMW AG respectfully requests that the Court fully adopt the Report and Recommendation of the Magistrate Judge and enter judgment as a matter of law in favor of BMW AG on all of Plaintiff's causes of action.

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<sup>1</sup> In denying BMW AG's Motion to Dismiss at the pleadings stage, the District Court did so "without prejudice to BMW AG's right to re-assert its challenge to personal jurisdiction at the summary judgment stage should discovery establish as a matter of law that the Court does not enjoy personal jurisdiction." (ECF No. 90 at 13).

Dated: July 19, 2024

Respectfully submitted,

/s/ Kurt M. Rozelsky

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